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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,462	10/23/2001	Chester G. Nelson	P-8851.00	4002
27581	7590	10/05/2005		
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MS-LC340 MINNEAPOLIS, MN 55432-5604			EXAMINER BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

STW

Office Action Summary	Application No. 10/035,462	Applicant(s) NELSON ET AL.	
	Examiner Mark W. Bockelman	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9-2-2005 has been entered.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell USPN 6,249,705 in view of Bowman-Amuah USPN 6,332,163.

Snell teaches a server arrangement comprising a server 102, a storage element (database 103) through which downloaded program updates pass through, and an interface 107 which may be wireless or modem (wires) for communicating with a plurality of network programmers 104_N. The network server can receive software updates which can then be downloaded to the network programmers. The network

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programmers are used to communicate and program a plurality of IMDs 105_N. Security measures established within the server/interface system are described in col. 4 lines 40+ and include the encryption of data and measures to protect patient data. Data integrity is performed so as to ensure the validity of data exchange, which thus intercepts data contaminants that may be included in the data. (i.e. viruses etc.) The transmission protocol may be TCP/IP as well as other types of internet protocol (column 3 lines 30-42).

Snell teaches wireless connections between the server and the IMD programmers but does not specifically mention optical fibers or radio transceivers, however such wireless interface transmissions are regarded as well known in the art. Additionally, Snell discusses the physician establishing a secure connection in the Table which the ordinary skilled artisan would understand as a login password or other similar security device that would deny unauthorized use. Finally, it is noted that to use a server administrator interface to service and to regulate transmission of information through the server was well known at the time of the invention.

While Snell does not teach Gateway server antivirus software, such is conventional as seen in Bowman- Amuah which uses a conventional software, namely "Netscape Proxy Server--high-performance server software for replicating and filtering access to Web content on the Internet or an intranet. Provides access control, URL filtering, and virus scanning." To implement the Snell system in a conventional internet with a gateway server having virus protect would have been obvious.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ji et al 5,623,600 in view of Snell USPN 6,249,705.

Applicant's apparent point of novelty is the provision of a security at the level of the server in an internet based communication system for serving programmable IMD's. Ji et al is cited as demonstrating Servers with data integrity assuring means that scan file for viruses (etc.) to intercept corrupt data were well known at the time of applicant's invention. In some of the embodiments of Snell, the network programmer does not perform any network programming functions (column 5 lines 55-67) but instead receive programming from the network server. Thus the server of Snell would have to have some type of storage device, even if only temporary. To be able to download software updates and then transmit them would require server storage. In addition, Ji (reference numerals 650,652) teaches the temporary storage of such files for virus analysis (figure 6c). To have provided the use of such a server for transmitting data to IMD programmers would have been obvious given that server based IMD programming systems were also known at the time of applicant's invention, which is demonstrated to be true by the citation of Snell 6,249,705.

Response to Arguments

Applicant's arguments filed 9-2-2005 have been fully considered but they are not persuasive. Applicant argues that the servers disclosed in Snell and in Ji do not describe storage space for storing programs, however such storage, even if only temporary as explained above, would constitute storage elements.

Conclusion

This is a RCE of applicant's earlier Application No. 10/035462. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272 -6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB

October 2, 2005


MARK BOCKELMAN
PRIMARY EXAMINER